

DATE: January 10, 1995
CASE NO. 94-FLS-0014

In the Matter of

ROBERT B. REICH, SECRETARY OF LABOR
U.S. DEPARTMENT OF LABOR,

Plaintiff,

v.

MYOUNG KIM, INDIVIDUALLY AND
DOING BUSINESS AS K & J FASHIONS

Respondents.

Appearances:

Pamela W. McKee, Esq.
For the Complainant

Frank Madey, Esquire,
For Respondent

Before: PAUL H. TEITLER
Administrative Law Judge

DECISION AND ORDER APPROVING
CONSENT FINDINGS

This proceeding arose under Section 16(e) of the Fair Labor Standards Act, as amended (29 U.S.C. §201, et seq.) (hereinafter referred to as "the Act"), and Part 580 of the Regulations issued thereunder (29 CFR Part 580). Consent Findings signed by the parties and all counsel (designated as Joint Exhibit 1) have been presented to the undersigned and the parties have requested that the Consent Findings be approved, as follows:

CONSENT FINDINGS

Pursuant to 29 CFR §18.9, the parties hereby agree to the following consent findings:

I

At all times pertinent to the Notice of Assessment of Civil Money Penalties, the respondents were subject to the provisions of the Fair Labor Standards Act, as amended, 29 U.S.C. §201, et seq.

II

By notice dated September 7, 1993, pursuant to Section 16(e) of the Act and 29 CFR Parts 578 and 580, a civil money penalty was assessed against the respondents for the respondents' alleged violations of Section 7 of the Act. Specifically, the Department alleged that respondents failed to pay to many of their employees time and one-half their regular rate of pay for hours worked over 40 in a week.

III

By letter dated September 20, 1993, the respondents filed a timely exception to the assessed civil money penalty pursuant to 29 CFR §580.6.

IV

The parties, in order to amicably resolve the disputed issues of fact and law concerning this matter, have agreed to the entry of these Consent Findings. The respondents further state that they have and will continue to remain in compliance with the provisions of Section 7 of the Act and the regulations promulgated pursuant thereto.

V

After further consideration and discussions in this matter and pursuant to the provisions of 29 CFR §§18.9 and 578.4, the plaintiff hereby modifies the Notice of Penalty Assessment dated September 7, 1993 by reducing the assessed penalty to \$1,000.00

VI

Respondents hereby withdraw their exception to the modified assessed civil money penalty and agree to deliver to plaintiff's representatives checks in the total amount of \$1,000.00 made payable to "Wage-Hour, Labor" in two (2) installments of \$500.00 each, the first payment due December 15, 1994 and the second payment due April 1, 1995.

VII

Plaintiff and respondents agree that any order entered in accordance with these Consent Findings shall, pursuant to 29 CFR §18.9(b)(1), have the same force and effect as an order made after a full hearing.

VIII

Plaintiff and respondents agree that the entire record upon which any final order in this matter may be based shall, pursuant to 29 CFR §18.9(b)(2), consist solely of the notice of penalty, as modified herein, and these Consent Findings.

IX

Respondents agree that any and all further procedural steps available to them before an Administrative Law Judge, and any rights to challenge or contest the validity of these Consent Findings or any order issued pursuant thereto are, pursuant to 29 CFR §18.9(b)(3) and (4), hereby waived.

I have carefully considered the facts involved in this case and the difficult legal and factual questions in dispute, as well as the criteria set forth in 29 U.S.C §201, et seq., 29 CFR Part 580, 29 CFR §§18.9, 578.4. Upon careful evaluation of same, I conclude that the settlement is fair and in the best interest of the parties. Moreover, I find that the Settlement was arrived at without duress, and only after full exploration by the parties of all issues in dispute and the difficult legal and factual questions involved. Pursuant to Section 16(e) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §201, et seq.) and Part 580 of the Regulations issued thereunder (29 CFR Part 580), I find that the settlement is fair, reasonable and adequate.

ORDER

Accordingly, it is hereby **ORDERED** that the Consent Findings be, and hereby is **APPROVED**.

IT IS FURTHER ORDERED that the respondent shall deliver to plaintiff's representative checks in the total amount of \$1,000.00 made payable to "Wage-Hour, Labor" in two (2) installments of \$500.00 each, the first payment due December 15, 1994 and the second payment due April 1, 1995.

PAUL H. TEITLER
Administrative Law Judge

Dated:
PHT:abr

